

**POLYGRAPH EXAMINERS BOARD—CONTINUATION,  
ADMINISTRATION, POWERS, AND DUTIES**

**CHAPTER 768**

**S. B. No. 441**

**An Act relating to the administration and continuation of the Polygraph Examiners Board and to regulation of polygraph examiners, trainees, and their employees; relating to confidentiality of results of polygraph examinations; relating to certain information; providing penalties; amending the Polygraph Examiners Act, as amended (Article 4413(29cc), Vernon's Texas Civil Statutes), by amending Sections 5, 6, 8, 9, 12, 14, 17, 19, 22, 23, and 26 and by adding Sections 13A, 19A, 19B, and 24A.**

*Be it enacted by the Legislature of the State of Texas:*

Section 1. Section 5, Polygraph Examiners Act, as amended (Article 4413(29cc), Vernon's Texas Civil Statutes), is amended by amending<sup>74</sup> Subsections (a), (b), and (e) and by adding<sup>75</sup> Subsections (f), (g), (h), (i), (j), and (k) to read as follows:

“(a) There is hereby established a Polygraph Examiners Board consisting of six members who shall be citizens of the United States and residents of the state for at least two years prior to appointment. Four members shall each have been engaged for a period of five consecutive years as a polygraph examiner prior to appointment to the board, and at the time of appointment as an active polygraph examiner. Two members must be representatives of the general public. A person is eligible for appointment as a public member if the person and the person's spouse are not licensed by an occupational regulatory agency in the field of polygraph examining, are not employed by and do not participate in the management of an agency or business entity related to the field of polygraph examining, and do not have, other than as consumers, a financial interest in a business entity related to the field of polygraph examining. No two board members may be employed by the same person or agency. Two of the members who are polygraph examiners must be qualified examiners of a governmental law enforcement agency, one of which shall be the supervisor of the polygraph section of the Department of Public Safety, and two of the members who are polygraph examiners must be qualified polygraph examiners in the commercial field. The members shall be appointed by the Governor of the State of Texas with the advice and consent of the Senate for a term of six years. Any vacancy in an unexpired term shall be filled by appointment of the Governor with the advice and consent of the Senate for the unexpired term. Appointments shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

“(b) The board shall contract with the Department of Public Safety for the administrative functions of the board including the collection of all fees and money due and the payment of all expenses, including travel expenses of board members. Each member of the board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the board. A member may not receive any

<sup>74</sup> Vernon's Ann.Civ.St. art. 4413(29cc),  
§ 5, subsecs. (a), (b), (e).

<sup>75</sup> Vernon's Ann.Civ.St. art. 4413(29cc),  
§ 5, subsecs. (f) to (k).

compensation for travel expenses, including expenses for meals and lodging other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the General Appropriations Act."

"(e) The Polygraph Examiners Board is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1993.

"(f) A member or employee of the board may not be an officer, employee, or paid consultant of a trade association in the polygraph examining field. A member or employee of the board may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry.

"(g) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252—9c, Vernon's Texas Civil Statutes), may not serve as a member of the board or act as the general counsel to the board.

"(h) It is a ground for removal from the board if a member:

"(1) does not have at the time of appointment the qualifications required by Subsection (a) of this section for appointment to the board;

"(2) does not maintain during his service on the board the qualifications required by Subsection (a) of this section for appointment to the board;

"(3) violates a prohibition prescribed by Subsection (f) or (g) of this section; or

"(4) fails to attend at least half of the regularly scheduled board meetings held in a calendar year, excluding meetings held while the person was not a board member.

"(i) If a ground for removal of a member from the board exists, the board's actions taken during the existence of the ground for removal are not invalid for that reason.

"(j) The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252—17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252—13a, Vernon's Texas Civil Statutes).

"(k) The board may recognize, prepare, or implement continuing education programs for polygraph examiners and trainees. Participation in the programs is voluntary."

Sec. 2. Section 6, Polygraph Examiners Act, as amended (Article 4413(29cc), Vernon's Texas Civil Statutes), is amended by amending<sup>76</sup> Subsection (a) and by adding<sup>77</sup> Subsections (d), (e), and (f) to read as follows:

"(a) The board shall issue regulations consistent with the provisions of this Act for the administration and enforcement of this Act and shall prescribe forms which shall be issued in connection therewith. The board may not adopt rules restricting competitive bidding or advertising by a licensee of the board except to prohibit false, misleading, or deceptive practices by the licensee. The board may not include in its rules to

76. Vernon's Ann.Civ.St. art. 4413(29cc), § 6, subsec. (a). 77. Vernon's Ann.Civ.St. art. 4413(29cc), § 6, subsecs. (d) to (f).

prohibit false, misleading, or deceptive practices by a licensee a rule that:

- "(1) restricts the licensee's use of any medium for advertising;
  - "(2) restricts the licensee's personal appearance or use of his voice in an advertisement;
  - "(3) relates to the size or duration of an advertisement by the licensee; or
  - "(4) restricts the licensee's advertisement under a trade name."
- "(d) During each fiscal biennium, the state auditor shall audit the financial transactions of the Department of Public Safety that relate to the administration of this Act.

"(e) On or before January 1 of each year, the Department of Public Safety shall make in writing to the governor and the presiding officer of each house of the legislature a complete and detailed report accounting for all funds received and disbursed by the department under this Act during the preceding year.

"(f) If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as added (Article 6252—13a, Vernon's Texas Civil Statutes), transmit to the board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the board receives the committees' statements."

Sec. 3. Sections 8, 9, 12, 14, 17, 19, 22, 23, and 26. Polygraph Examiners Act, as amended (Article 4413(29cc), Vernon's Texas Civil Statutes), are amended <sup>78</sup> to read as follows:

#### Examiner's license qualifications

"Sec. 8. (a) A person is qualified to receive a license as an examiner

"(1) who has not been convicted of a felony or a misdemeanor involving moral turpitude; and

"(2) who holds a baccalaureate degree from a college or university accredited by an organization that the board designates and that the board determines has accreditation standards to ensure a high level of scholarship for students, or in lieu thereof, has five consecutive years of active investigative experience immediately preceding his application; and

"(3) who is a graduate of a polygraph examiners course approved by the board and has satisfactorily completed not less than six months of internship training, provided that if the applicant is not a graduate of an approved polygraph examiners course, satisfactory completion of not less than 12 months of internship training may satisfy this subdivision; and

"(4) who has passed an examination conducted by the board, or under its supervision, to determine his competency to obtain a license to practice as an examiner.

"(b) Prior to the issuance of a license, the applicant must furnish to the board evidence of a surety bond or insurance policy. Said surety bond or insurance policy shall be in the sum of \$5,000.00 and shall be conditioned that the obligor therein will pay to the extent of the face amount of such surety bond or insurance policy all judgments which may

<sup>78</sup> Vernon's Ann.Civ.St. art. 4413(29cc),  
 §§ 8, 9, 12, 14, 17, 19, 22, 23, 26.

be recovered against the licensee by reason of any wrongful or illegal acts committed by him in the course of his examinations.

"(c) The board by rule shall establish the criteria by which it determines whether an applicant complies with the active investigative experience requirement established by Subdivision (2) of Subsection (a) of this section.

#### Acquisition of license by present examiners

"Sec. 9. On the effective date of this Act, any person who held a license issued by the board established or attempted to be established by Chapter 441, Acts of the 59th Legislature, Regular Session, 1965, and whose license was in effect on the date on which said Act was held invalid, shall be automatically licensed hereunder until such date as his license under the Act aforesaid has expired and thereafter may renew his license on payment of the fee herein provided. The applicant must also satisfy the provisions of Subsection (b) of Section 8 of this Act."

#### Applicant with out-of-state license

"Sec. 12. The board may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state."

#### Fees

"Sec. 14. (a) The board shall establish reasonable and necessary fees for the administration of this Act in amounts not to exceed:

"1. Polygraph examiner's license	\$225
"2. Internship license	115
"3. Duplicate license	40
"4. Renewal fee for examiner's license	210
"5. Extension or renewal of an internship license	40
"6. Examination fee	75

"(b) The fees required by this Act may be paid by the governmental agency employing the examiner."

#### Termination and renewal of examiner's license

"Sec. 17. (a) Each polygraph examiner's license shall be issued for the term of one year and shall, unless suspended or revoked, be renewed annually.

"(b) A person may renew his unexpired license by paying to the board before the expiration date of the license the required renewal fee.

"(c) If a person's license has been expired for not more than 90 days, the person may renew the license by paying to the board the required renewal fee and a fee that is one-half of the examination fee for the license.

"(d) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

"(e) If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

"(f) A polygraph examiner whose license expired while he was in the federal service on active duty with the armed forces of the United States, or the national guard called into service or training, or in training or education under the supervision of the United States preliminary to induction into the military service, may have his license renewed without examination if within two years after termination of such service, training, or education except under condition other than honorable, he pays to the board the required renewal fee and furnishes the board with an affidavit to the effect that he has been so engaged and that his service, training, or education has been so terminated."

**Refusal, probation, reprimand, suspension, revocation—grounds**

"Sec. 19. The board shall refuse to issue a license, shall revoke or suspend a license, shall reprimand a licensee, or may probate a license suspension on any one or more of the following grounds:

"(1) for failing to inform a subject to be examined as to the nature of the examination;

"(2) for failing to inform a subject to be examined that his participation in the examination is voluntary;

"(3) material misstatement in the application for original license or in the application for any renewal license under this Act;

"(4) wilful disregard or violation of this Act or of any regulation or rule issued pursuant thereto, including, but not limited to, wilfully making a false report concerning an examination for polygraph examination purposes;

"(5) if the holder of any license has been adjudged guilty of the commission of a felony or a misdemeanor involving moral turpitude;

"(6) making any wilful misrepresentation or false promises or causing to be printed any false or misleading advertisement for the purpose of directly or indirectly obtaining business or trainees;

"(7) having demonstrated unworthiness or incompetency to act as a polygraph examiner as defined by this Act;

"(8) allowing one's license under this Act to be used by any unlicensed person in violation of the provisions of this Act;

"(9) wilfully aiding or abetting another in the violation of this Act or any regulation or rule issued pursuant thereto;

"(10) where the license holder has been adjudged as a habitual drunkard or mentally incompetent as provided in the Probate Code;

"(11) failing, within a reasonable time, to provide information requested by the secretary as the result of a formal complaint to the board which would indicate a violation of this Act;

"(12) failing to inform the subject of the results of the examination if so requested; or

"(13) violating Subsection (a) of Section 19A of this Act relating to the confidentiality of information acquired from an examination."

**Board hearing**

"Sec. 22. (a) If the board proposes to refuse a person's application for a license or to suspend or revoke a person's license, the person is entitled to a hearing before the board.

"(b) Proceedings for the refusal, suspension, or revocation of a license are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252—13a, Vernon's Texas Civil Statutes).

**Judicial review**

"Sec. 23. Any person dissatisfied with the action of the board in refusing his application or suspending or revoking his license, or any other action of the board, may appeal the action of the board by filing a petition within the appropriate time in the district court in the county where the person resides or in the district court of Travis County, Texas. An appeal of an action of the board is governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252—13a, Vernon's Texas Civil Statutes). Judicial review of an action of the board shall be conducted under the substantial evidence rule."

**Penalties**

"Sec. 26. (a) Any person who violates any provision of this Act or any person who falsely states or represents that he has been or is a polygraph examiner or trainee or that he is qualified to apply instrumentation of the detection of deception or verification of truth of statements shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$100 nor more than \$1,000 or by imprisonment in the county jail for a term of not to exceed six months, or both.

"(b) A person commits an offense if the person intentionally, knowingly, recklessly, or with criminal negligence violates Section 19A of this Act relating to the confidentiality of information acquired from a polygraph examination. An offense under this subsection is a Class B misdemeanor."

Sec. 4. The Polygraph Examiners Act, as amended (Article 4413(29cc), Vernon's Texas Civil Statutes), is amended by adding<sup>79</sup> Sections 13A, 19A, 19B, and 24A to read as follows:

**Notice and analysis of examination results**

"Sec. 13A. (a) Within 30 days after the date a license examination is administered under this Act, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination within two weeks after the date the board receives the results from the testing service. If it is foreseeable that the notice of the examination results will be delayed for more than 90 days after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day.

"(b) If requested in writing by a person who fails a license examination administered under this Act, the board shall furnish the person with an analysis of the person's performance on the examination."

**Confidentiality of examination results**

"Sec. 19A. (a) Except as provided by Subsection (c) of this section, a licensed polygraph examiner, licensed trainee, or employee of a licensed polygraph examiner may not disclose to another person information acquired from a polygraph examination.

"(b) Except as provided by Subsection (d) of this section, a person for whom a polygraph examination is conducted or an employee of the

79. Vernon's Ann.Civ.St. art. 4413(29cc),  
 §§ 13A, 19A, 19B, 24A.

person may not disclose to another person information acquired from the examination.

"(c) A licensed polygraph examiner, licensed trainee, or employee of a licensed polygraph examiner may disclose information acquired from a polygraph examination to:

"(1) the examinee or any other person specifically designated in writing by the examinee;

"(2) the person, firm, corporation, partnership, business entity, or governmental agency that requested the examination;

"(3) members or their agents of governmental agencies such as federal, state, county, or municipal agencies that license, supervise, or control the activities of polygraph examiners;

"(4) other polygraph examiners in private consultation, all of whom will adhere to this section; or

"(5) others as may be required by due process of law.

"(d) A person for whom a polygraph examination is conducted or an employee of the person may disclose information acquired from the examination to a person described by Subdivisions (1) through (5) of Subsection (c) of this section.

"(e) The board or any other governmental agency that acquires information from a polygraph examination under Subdivision (3) of Subsection (c) of this section shall keep the information confidential.

#### Information about complaints

"Sec. 19B. (a) The board shall keep an information file about each complaint filed with the board relating to a licensee.

"(b) If a written complaint is filed with the board relating to a licensee, the board, at least as frequently as quarterly, shall notify the complainant of the status of the complaint until its final disposition unless the notification would jeopardize an undercover investigation."

#### Consumer information

"Sec. 24A. (a) The board shall prepare information of consumer interest describing the regulatory functions of the board and the board's procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies.

"(b) Each written contract for the services in this state of a licensed polygraph examiner and each waiver of liability that is signed by the subject of a polygraph examination shall contain the name, mailing address, and telephone number of the board."

Sec. 5.<sup>80</sup> A rule adopted by the Polygraph Examiners Board before September 1, 1981, that conflicts with the Polygraph Examiners Act, as amended (Article 4413(29cc), Vernon's Texas Civil Statutes), as amended by this Act, is void. Within 90 days after September 1, 1981, the board shall repeal the rule.

Sec. 6.<sup>80</sup> (a) A person holding office as a member of the Polygraph Examiners Board on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.

(b) The governor shall appoint two public members to fill the offices of the incumbent members who are not polygraph examiners in the commercial field and whose terms expire June 18, 1983, and June 18, 1985.

<sup>80</sup>. Vernon's Ann.Civ.St. art. 4413(29cc)  
note.

Sec. 7. This Act takes effect September 1, 1981.

Sec. 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on March 16, 1981, by a viva-voce vote; Senate concurred in House amendment on May 27, 1981, by a viva-voce vote; passed the House, with amendment, on May 25, 1981, by a non-record vote.

Approved June 17, 1981.

Effective Sept. 1, 1981.

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## AIRPORTS—ZONING—NEARBY LAND—HAZARDS AND COMPATIBLE USE

### CHAPTER 769

#### S. B. No. 483

An Act relating to airport zoning regulations and the authority of political subdivisions to regulate the use of land near airports; amending the Airport Zoning Act, as amended (Articles 46e—1, 46e—3, 46e—4, and 46e—6, Vernon's Texas Civil Statutes), by amending Subdivision (1) of Section 1 and adding Subdivisions (8), (9), and (10) to that section, by amending Subdivisions (1) and (2) of Section 3 and adding Subdivision (3) to that section, by amending Subdivision (2) of Section 4 and adding Subdivision (3) to that section, and by amending Subdivision (2) of Section 5.

#### *Be it enacted by the Legislature of the State of Texas:*

Section 1. Section 1, Airport Zoning Act, as amended (Article 46e—1, Vernon's Texas Civil Statutes), is amended by amending <sup>81</sup> Subdivision (1) and adding <sup>82</sup> Subdivisions (8), (9), and (10) to read as follows:

“(1) ‘Airport’ means any area of land or water, whether of public or private ownership, designed and set aside for the landing and taking off of aircraft and utilized or to be utilized in the interest of the public for such purposes. The term ‘Airport’ shall also include any area having installations relating to flight and particularly including installations, facilities and base of operations for tracking and/or data acquisition concerning flight. Such areas shall be deemed to be ‘utilized in the interest of the public’ when the owner thereof by contract, license or otherwise permits the use of such areas by the public to an extent that the airport fulfills an essential community purpose. Such areas also shall be deemed to be ‘utilized in the interest of the public’ when utilized by the Government of the State of Texas or an agency thereof or by the Government of the United States or any agency thereof in furtherance of the National Defense or any National Government Program relating to flight.”

<sup>81</sup>. Vernon's Ann.Civ.St. art. 46e—1, subd. (1).      <sup>82</sup>. Vernon's Ann.Civ.St. art. 46e—1, subds. (8) to (10).